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DECISION



21650
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

PL-1
Golden

FILE: B-207006

DATE: April 27, 1982

MATTER OF: Catalyst Research Corporation

DIGEST:

1. Bid offering a delivery schedule different from the delivery schedule required in the solicitation was properly rejected as nonresponsive, since such offer constitutes a material deviation from the solicitation's requirements.
2. Protest of alleged improprieties in solicitation filed with bid is untimely since GAO Bid Protest Procedures require filing prior to bid opening. 4 C.F.R. § 21.1 (1981).

Catalyst Research Corporation (CRC) protests the rejection of its bid as nonresponsive under the Department of the Navy's (Navy) invitation for bids (IFB) No. N66001-82-B-0215 for thermal batteries. The Navy rejected CRC's bid because it took exception to the solicitation's delivery schedule. CRC argues it was responsive and, although the Navy subsequently canceled the solicitation requests award under the original solicitation.

We dismiss the protest in part and we summarily deny the protest in part.

The IFB included a "Required delivery schedule" which provided that the "delivery schedule must NOT extend the delivery period beyond the time for delivery called in the following REQUIRED delivery schedule set forth." It further stated that "Bids offering delivery * * * of a quantity under such terms and conditions that delivery will not clearly fall within the applicable REQUIRED delivery period * * * will be considered nonresponsive and will be rejected."

The IFB schedule required delivery of items 0003, 0006 and 0007 within 10 days after date of contract.

However, under the bidders' proposed delivery schedule, CRC inserted for items 0003, 0006, 0007 a delivery date of within 45 days after date of contract. CRC argues that an attachment "B" submitted with its bid, which contains CRC's comments and exceptions to the solicitation, stated that the change in delivery date was only a request to relax the delivery requirement.

In order to be responsive, a bid must contain an unequivocal offer to provide the requested items in total conformance with the terms and specifications of the solicitation. A bid which takes exception to any of the essential requirements of the solicitation is not responsive and must be rejected. Polychromic Designs, B-203980, September 22, 1981, 81-2 CPD 238; J. Baranello and Sons, 58 Comp. Gen. 509 (1979), 79-1 CPD 322.

We have held that a bid which does not conform to the required delivery date is nonresponsive under section 2-404.2(c) of the Defense Acquisition Regulation (DAC No. 76-17, September 1, 1978) and must be rejected. Deere & Company, B-189136(1), June 28, 1977, 77-1 CPD 460. This Office has recognized the materiality of completion schedules and dates and the substantial effect they may have on the competitive position of bidders. Jay Maritime Agency Corporation, B-199768, December 20, 1980, 80-2 CPD 443; Sunoptic, Inc., B-194722, May 14, 1979, 79-1 CPD 351; Parker-Hannifin Corporation, B-186385, August 3, 1976, 76-2 CPD 120. Here, CRC inserted a delivery schedule on three items which clearly deviated from the required delivery schedule and rendered the bid nonresponsive. The attachment "B," by referring to the delivery schedule deviations as a "request," does not alter our conclusion that CRC's bid was not an unequivocal offer to perform according to the required delivery schedule.

We also note that if attachment "B" was intended as a protest to the agency, it was untimely. A protest of apparent improprieties in a solicitation is untimely and, therefore, for dismissal when it is first submitted with a protester's bid. 4 C.F.R. § 21.2 (1981). Van-Tel, Inc., B-203397, July 1, 1981, 81-2 CPD 3; Sunoptic, Inc., supra.

Since the protester's initial submission affirmatively demonstrates that the protest is without legal merit, we have decided the protest without requesting an agency

report, Wilderness Research Institute, Inc., B-203326,
June 17, 1981, 81-1 CPD 512.

We dismiss the protest in part and summarily deny
the protest in part.

Melton J. Fowler
for Comptroller General
of the United States